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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

v.

10 MICHAEL G. MCPHERSON,

11 Defendant.

CASE NO. CR19-5213 BHS

ORDER DENYING
DEFENDANT'S MOTION TO
REOPEN DETENTION HEARING

12
13 This matter comes before the Court on Defendant Michael McPherson's
14 ("McPherson") appeal of the magistrate judge's denial of his motion to reopen his
15 detention hearing. Dkt. 37. The Court has considered the pleadings filed in support of
16 and in opposition to the motion and the remainder of the file and hereby denies the
17 motion for the reasons stated herein.

18 **I. PROCEDURAL AND FACTUAL BACKGROUND**

19 On February 20, 2019, the Government filed a complaint against McPherson
20 alleging that McPherson committed the crimes of felon in possession of a firearm,
21 possession of controlled substances with intent to distribute, and possession of a firearm
22 in furtherance of a drug trafficking crime. Dkt. 1. Attached to the complaint, Task Force

1 Officer Tyson Sagiao of the Federal Bureau of Investigation declared that on September
2 12, 2018, state police officers executed a search warrant at McPherson's home. *Id.* at 4–
3 5, ¶ 6. During the search, officers found “100 grams of methamphetamine, suspected
4 drug scale(s) and drug packaging, and multiple firearms” as well as over \$16,000 in cash.
5 *Id.* at 5, ¶ 9. The officers arrested McPherson and transported him to the county jail. *Id.*
6 at 7, ¶ 11.

7 On March 22, 2019, the government filed a motion for detention. Dkt. 6. On
8 March 27, 2019, United States Probation Officer Nick Bassett submitted a supplemental
9 pretrial services report under seal. Dkt. 10. The report states that McPherson was
10 released on bond the day after his arrest, September 13, 2018. Relevant to the instant
11 motion, the state court imposed the bond condition that McPherson “shall not possess
12 weapons or firearms.” The report also lists numerous instances of bench warrants being
13 issued against McPherson for his failure to appear at court hearings regarding multiple
14 independent misdemeanors. Officer Bassett viewed McPherson “as a risk of
15 nonappearance based on his history of failing to appear, prior failure to abide by court
16 orders, lack of employment or income, and substance abuse issues.”

17 On March 27, 2019, United States Magistrate Judge Theresa L. Fricke granted the
18 Government's motion and ordered McPherson to be detained. Dkt. 12. Judge Fricke
19 wrote that “the Government's attorney stated during the hearing – and the Supplemental
20 Pretrial Services Report also indicates -- that after the events in September of 2018 that
21 resulted in charges in this case, more search warrants were executed, and from those
22 searches of the defendant's vehicles, a storage unit, and his current 2019 address (not his

1 mother's residence) in Federal Way, Washington, the agents discovered additional
2 weapons, ammunition, and also body armor." *Id.* at 1.

3 On May 16, 2019, the Government filed an indictment against McPherson
4 charging him with two counts of possession of controlled substances with intent to
5 distribute, two counts of possession of a firearm in furtherance of a drug trafficking
6 crime, and trafficking of stolen firearms. Dkt. 17.

7 On March 19, 2020, McPherson filed a motion for review of the detention order.
8 Dkt. 28. McPherson asserted that (1) his attorney discovered new information that
9 materially alters the calculus relied upon to detain him and (2) the current COVID-19
10 pandemic also drastically alters that calculus. *Id.* On March 20, 2020, the Court referred
11 the motion to Judge Fricke. Dkt. 29. On March 27, 2020, Judge Fricke denied the
12 motion "because Mr. McPherson has not presented material or new information to show
13 it would be less likely he would be a flight risk or risk of failure to appear, or less likely
14 that he would present a risk of danger to the community or to other persons." Dkt. 36.

15 On April 1, 2020, McPherson filed this appeal. Dkt. 37. On April 6, 2020, the
16 government responded. Dkt. 40. On April 7, 2020, McPherson replied. Dkt. 41. On
17 April 8, 2020, McPherson filed a supplement. Dkt. 42.

18 II. DISCUSSION

19 When considering a motion challenging a magistrate judge's detention order, the
20 Court "should review the evidence before the magistrate and make its own independent
21 determination whether the magistrate's findings are correct, with no deference." *United*
22 *States v. Koenig*, 912 F.2d 1190, 1193 (9th Cir. 1990). The Court must enter its own

1 findings of fact, “whether different from or an adoption of the findings of the magistrate,”
2 and render a decision “without deference to the magistrate’s ultimate conclusion.” *Id.*

3 The Court may reopen a detention hearing “if the judicial officer finds that
4 information exists that was not known to the movant at the time of the hearing and that
5 has a material bearing on the issue whether there are conditions of release that will
6 reasonably assure the appearance of such person as required and the safety of any other
7 person and the community.” 18 U.S.C. § 3142(f)(2). New and material information
8 consists of something other than a defendant’s own evaluation of his character or the
9 strength of the case against him: truly changed circumstances, something unexpected, or
10 a significant event. *See United States v. Rodriquez-Adorno*, 606 F.Supp.2d 232, 239
11 (D.P.R. 2009).

12 In this case, McPherson’s motion is based on alleged errors in Judge Fricke’s
13 original detention order, McPherson’s current sobriety, and his contention that the
14 Federal Detention Center (“FDC”) has implemented “facially inadequate CORONA-19
15 screening mechanisms.” Dkt. 37. First, McPherson mischaracterizes Judge Fricke’s
16 detention order by asserting that she “misapplied the law by treating the gun and drug
17 charges that Mr. McPherson faces as per se evidence of a clear and convincing danger”
18 and “illogically” relied upon his juvenile assault conviction to conclude he was an
19 “extreme danger” to the community. Not only are these seemingly untimely arguments
20 in support of reconsideration instead of new information but they are also reflect a
21 misunderstanding of Judge Fricke’s order. McPherson fails to recognize the magnitude
22 of his actions despite the serious charges he faces. For example, officers have made

1 credible allegations that McPherson sold unregistered weapons while he was on bond for
2 some of these current and similar charges in state court. In other words, McPherson was
3 given his freedom with conditions, and he not only possessed guns and drugs but also
4 trafficked stolen firearms. It is inconceivable that any reasonable jurist could find other
5 than the Government has shown by clear and convincing evidence that McPherson is
6 willing to ignore bond conditions and will most likely continue to commit crimes if given
7 the opportunity.

8 McPherson also argues that Judge Fricke’s “analysis of a danger of reappearance
9 lacks sound logic and is contradicted by the fact that by Mr. McPherson attended all of
10 his recent State court proceedings.” Dkt. 37 at 9. Similarly, McPherson asserts that
11 Judge Fricke “only found a likelihood of non-appearance by relying on temporally distant
12 [failure to appears (“FTAs”)] and illogically equating a failure to always live at his
13 mother’s residence in conformance with a state release condition with a failure to
14 appear.” *Id.* at 7 n.20. These assertions minimize McPherson’s consistent pattern of
15 failing to appear between 2007 and 2018 as well as failing to honor other court orders.
16 Moreover, Judge Fricke concluded his family relationships, while positive, do “not
17 appear to be stable or reliable in terms of regulating his ability to control his behavior at
18 this time.” Dkt. 12 at 1. Judge Fricke was concerned with McPherson’s ability to follow
19 all bond conditions, which in no way results in the illogical conclusion that McPherson
20 would also fail to appear if he cannot stay away from guns and drugs. While
21 McPherson’s year-long sobriety is commendable, he was in no position to choose not to
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1 consume drugs because he has been in custody.¹ Thus, aside from McPherson's stated
2 intentions, there is no evidence in the record to establish or suggest that he would not use
3 drugs if released. Therefore, McPherson's arguments regarding alleged errors in the
4 original detention order are without merit.

5 Second, McPherson argues that "he – and the community as a whole – would be
6 safer if he were released, in so far as he is far more likely to become infected by the virus
7 if he remains inside the walls of the FDC." Dkt. 41 at 4. The Government argues that this
8 is pure speculation and asserts that "Bureau of Prisons and the United States Marshals are
9 going to great lengths to limit the likelihood that anyone with the virus is introduced to
10 the institution." Dkt. 40 at 9. The Court agrees with the Government at least to the
11 extent that, based on the facts of this case, it is more reasonable to assume that
12 McPherson is at a greater risk to others and the community upon release than in custody.
13 McPherson has a documented history of ignoring specific, court-enforced orders
14 regarding his daily activities while on bond and therefore there is little to no assurance
15 that he would abide by Governor Inslee's Stay at Home, Stay Healthy order that applies
16 to the population in general. In fact, given his previous bond violation, it is conceivable
17 that McPherson may have additional drugs and weapons stored at locations unknown to
18 authorities that would allow him to commit additional crimes upon his release.
19 Therefore, McPherson's argument that he and others would be safer upon his release is
20 without merit.

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22 ¹ The Court accepts McPherson's assertion at face value because illegal drugs frequently
enter correctional institutions.

1 In conclusion, McPherson has failed to submit any new or material information to
2 establish a greater likelihood that he will appear or that other people and the community
3 would be safer upon his release. Thus, McPherson's motion is denied.

4 **III. ORDER**

5 Therefore, it is hereby **ORDERED** that McPherson's appeal of the magistrate
6 judge's denial of his motion to reopen his detention hearing, Dkt. 37, is **DENIED**.

7 Dated this 9th day of April, 2020.

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10 BENJAMIN H. SETTLE
United States District Judge